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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964.

No.

ROBERT BOWMAN, on behalf of himself and all other taxpayers of the County of Lake, State of Illinois,

Plaintiffs-Appellants,

vs.

LAKE COUNTY PUBLIC BUILDING COMMISSION and COUNTY OF LAKE,

Defendants-Appellees,

and

LAKE COUNTY BAR ASSOCIATION,

Intervenor-Defendant-Appellee.

Appeal from the Supreme Court of the State of Illinois.

REPLY TO MOTION TO DISMISS APPEAL.

REPLY TO MOTION TO DISMISS.

To The Honorable Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States.

Now comes ROBERT BOWMAN, on behalf of himself and all other taxpayers of the County of Lake, State of

Illinois, Plaintiffs-Appellants, by Paul E. Hamer, their attorney, pursuant to the rules of this Court and in reply to the Motion to Dismiss Appeal heretofore filed by the Defendants-Appellees, repeats and realleges that the Illinois Supreme Court upheld the validity of a statute alleged to have been repugnant to the Federal Constitution and further, that said judgment does not rest on an adequate non-federal basis.

To avoid confusion, the allegations of this Reply will be set forth under each of the Headings used by the Defendants-Appellees in their Motion to Dismiss.

Opinion Below

There was no opinion of the trial judge. The order set forth in Appendix "A" of their Motion is merely a final order prepared by counsel for the Defendants-Appellees prior to the purported hearing and signed by the trial court within two minutes after it had overruled the Motion to Dismiss the Counterclaim filed by the plaintiffs.

The fourth opinion referred to by the Plaintiffs-Appellants is the opinion of the Illinois Supreme Court in *Peo. ex rel Adamowski* v. *Public Building Commission of Chicago,* 11 Ill. 2d 125. This opinion was used by the said Supreme Court as a basis for precluding any subsequent attacks on the Public Building Commission Act. In the decision appealed from, the Court states: "The constitutionality of the Public Building Commission Act was upheld in *People ex rel. Adamowski* v. *Public Building Commission of Chicago,* 11 Ill. 2d 125, and need not be further considered" (App. 63a). It was necessary to refer to this opinion to show that the issues raised and decided in the *Adamowski* case are different than those raised in the case at bar and that at the date of the *Adamowski* decision certain portions of the Act in question were not

in existence. Therefore the Constitutional questions raised in this case could not have been considered by the Illinois Supreme Court in that decision.

The opinion set forth in the Motion to Dismiss as Appendix "B" was not a mandate to issue an injunction without a hearing, nor was the Supplemental Complaint in existence at the time of said decision.

NO STATUTE INVOLVED.

The final order of the trial court as set forth in Appendix "A" of the Motion to Dismiss clearly shows that the trial court ruled that "the constitutionality of the Public Building Commission has been adjudicated by the Illinois Supreme Court." The opinion of the Illinois Supreme Court (App. 63a) also shows that it ruled that the constitutionality of the Public Building Commission had been upheld in the *Adamowski* case and would not be considered further.

The reason for not appealing the prior decision of the Illinois Supreme Court in the first *Bowman* case is that the said Court in its opinion merely affirmed the decision of the trial court which had dismissed the action for "want of equity" and pointed out that certain necessary allegations had been omitted (App. 47a-61a). Following the specific suggestions of the Illinois Supreme Court, a new complaint was prepared supplying the necessary allegations which had been omitted. Therefore, the Plaintiffs-Appellants aver that the validity of the Public Building Act was upheld by the Illinois Supreme Court, since the said Court indicated it would not tolerate any subsequent attacks on the Act in question.

SUGGESTIONS IN SUPPORT.

(a) There Is No Federal Question Before This Court.

There were no Federal questions raised or decided by the Illinois Supreme Court in *Bowman* v. *County of Lake*, 29 Ill. 2d 268, since the Court specifically ruled that there were no Federal questions raised (App. 57a). Thus, an appeal to this Honorable Court was precluded. There were no Federal questions raised or decided by the Illinois Supreme Court in any of the cases, except the case at bar. Not only was the constitutionality of the Act upheld, but the Illinois Supreme Court also ruled that there had been no denial of due process by the action of the trial court (App. 63a).

(b) The Material Facts of This Attempted Appeal.

The Plaintiffs-Appellants must take vigorous exceptions to the statements set forth on page 5 of the Motion to Dismiss Appeal wherein counsel states that the "Plaintiffs-Appellants filed a class action on January 7, 1963 to prevent the sale of revenue bonds for building a Courthouse Complex — —." The avowed purpose of that suit was to prevent the transfer of $500,000 of public monies to the Public Building Commission and to seek the return of $650,000 of these funds theretofore transferred.

Again on page 6, the Defendants-Appellees state: "The present appeal is a continued effort to keep litigation pending." The statement is simply not true. The revenue bonds have long since been sold. If the purpose of this appeal was to prevent that sale, this appeal would be rendered futile.

(c) Plaintiffs-Appellants Had Their Day In Court.

The Plaintiffs-Appellants have not had their day in Court. At page 6 of their Motion to Dismiss, the Defendants-Appellees indicate that the burden was on the plaintiffs to file an answer. Within two minutes after the trial court struck the motion to dismiss, it signed the final order granting the permanent injunction. The issue on the counterclaim was whether or not the litigation was in fact harassing or vexatious. The Plaintiffs-Appellants were denied the opportunity to answer and to refute these unwarranted changes. The issuance of a permanent injunction without a hearing or opportunity to answer or defend against these serious charges is one of the primary reasons for this appeal.

(d) No Revenue Act Is Involved.

The Plaintiffs-Appellants do not contend the validity of the Revenue Act is involved. If a taxpayer filed a tax objection based upon "any issue raised and decided or governed in principle by the decision of the Supreme Court in *Bowman* v. *County of Lake,* 29 Ill. 2d 268" he is in violation of the injunction. However, what does the term "governed in principle" mean? Should every taxpayer be forced to run the risk of violating this injunction in order to determine the meaning of the phrase? If the words "governed in principle" are deleted from the injunction, we then may proceed with the trial of the instant case, since the issues in the instant case were not raised or decided in the prior *Bowman* case.

The applicable provisions of the Revenue Act were set forth in the appendix to show the procedure recommended by the Illinois Supreme Court in the first *Bowman* case. After that decision, the Plaintiffs-Appellants attempted to utilize this method, but the State's Attorney refused to

permit the filing of the tax objections on the grounds that the taxes had not been paid under protest and that the date for filing the objections had also passed. Also a new tax year had intervened and under Illinois Law, each tax year is a separate cause of action. The Plaintiffs-Appellants, then filed the instant suit alleging that an attempt had been made to utilize the suggested remedy and it had proven inadequate since the public monies had been transferred in spite of the suit. Further, the Illinois Law does not permit class actions be filed on tax objections, since each individual must pay the full amount of his taxes under protest and then file written objections on each individual parcel of real property. To have hundreds of thousands of taxpayers follow this procedure would unnecessarily disrupt the entire judicial system. One of the fundamental principles of equity is to utilize the courts of equity to avoid a multiplicity of suits. This is another reason why this instant case is different from the prior *Bowman* case.

The Plaintiffs-Appellants included the complaint and the supplemental complaint in the case at bar in order that this Honorable Court might examine the pleadings to determine whether or not the pleadings now state a cause of action based upon the new facts arising since the prior decision.

Motion to Dismiss Petition May Not Be Filed.

Finally, and most important, it should be noted that the Jurisdictional Statement heretofore filed by the Plaintiffs-Appellants is, in the alternative, a Petition for a Writ of Certiorari. Under Rule 24(2) of this Court, a motion to dismiss a petition for a Writ may not be filed.

WHEREFORE, ROBERT BOWMAN, on behalf of himself and all other taxpayers of the County of Lake, State of Illinois moves this Honorable Court to strike the Motion to Dismiss Appeal heretofore filed by the Defendants-Appellees herein.

Respectfully submitted,

PAUL E. HAMER
Counsel for the Plaintiffs-Appellants.

END